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UNITED STATES DISTRICT COURT

STATE OF OREGON

EUGENE DIVISION

: James-Brent: Alvarez.

Case No. 6:19-cv-01071-AA

Plaintiff,

PLAINTIFFS' OBJECTION AND
MOTION FOR PERFORMANCE
OF CONTRACT

v.

Luke Sitts, et al.

Defendants.

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I. OBJECTION

Plaintiff—James-Brent: Alvarez, objects to defendants filing a non-responsive reply to plaintiff’s Motion for Leave to Amend (ECF No. 45) as directed by the Court on April, 1, 2020, (ECF 46) (Order at 2). Defendants failed to respond to the facts and memorandum in Section II. (B)(2) set forth within the supplemental pleading (“Third Amended Complaint”) (“TAC” in citations) of plaintiff’s Motion for Leave to Amend, thereby, the memorandum of law is unrebutted fact established in the record pursuant to Fed. R. of Evidence 301.¹

Defendant’s pleadings continue to avoid a responsive reply, and look to create confusion by: (1) misconstruing the Court’s Opinion and Order; (2) consistently referencing mistakes made by a pro se litigant with his original complaint; (3) showing prejudice to the spiritual beliefs of plaintiff relying on the US Constitution as the Law; and (4) alleging additional facts—claiming a routine traffic stop—in an attempt to lay the foundation for the complaint.¹

Defendants’ have the opportunity to introduce facts into the record by filing an answer in accordance with Fed. R. of Civ. P. 7(a)(2).³ However, even if defendant’s allege facts within an answer claiming the event was a traffic stop. That too fails. As it would be prejudicial of the UOPD officers to form a legal conclusion—based on plaintiff traveling in his automobile—about the plaintiff’s activity, and thereby, once due process is violated any jurisdiction the UOPD officers may have had, is no longer. Consequently, defendant’s case law is irrelevant because it’s based on facts not alleged within the plaintiff’s complaint.

¹ Rule 301. Presumptions in Civil Cases Generally: In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

² “Statements of counsel in their briefs or argument while enlightening to the Court are not sufficient for purposes of granting a motion to dismiss or summary judgment.” *Trinsey v. Pagliaro* D.C. Pa., 229 F. Supp. 649 (1964).

³ Rule 7(a)(2). Pleading allowed: an answer to a complaint.

II. MOTION

Therefore, plaintiff: (1) respectfully notices the Court of the following undisputed facts in the record pursuant to Fed. R. of Civ. P. 301; and (2) respectfully moves the Court to enforce plaintiff's contractual rights of the contract <the US Constitution> as scribed below:

- **28 U.S. Code § 1331**, as “the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States,” and;
- **28 U.S. Code 1343**, “to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States,” and;
- **28 U.S. Code 1361** “action to compel an officer of the United States to perform his duty,” and;
- **28 U.S. Code § 453** “Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: “I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.”

This action before the Court arises as a request upon notice, for specific performance of enforcement of the contract—[t]he United States Constitution—by a US National who was deprived of his contracted rights, and thereby, suffered a breach of contract. The breaches of contract are set forth below as alleged in plaintiff's pleadings:

- US Const art. I, § 10, cl. 1 for detaining plaintiff for a title of Nobility, issuing traffic tickets, and impairing plaintiff's daily-life obligations.
- Fourth Amendment right to be free of unwarranted searches and seizures.
- Fifth Amendment right to remain silence.
- Sixth Amendment right to council.
- Ninth Amendment right to travel.
- Tenth Amendment right to be free of government officials acting outside of their constitutional limits.

- Thirteenth Amendment right to be free of involuntary service.
- Fourteenth Amendment right to due process and equal protection of the laws.

In sum, plaintiff seeks to hold defendants accountable for negligently depriving plaintiff of his contracted rights with the civil government that defendants swore to uphold. This matter arises from plaintiff exercising his right to travel, and upon being deprived of that right by UOPD officers—Sitt, Brooks, Geeting, Barrett, and Morris—plaintiff exercised his rights to council, silence, and freedom from unreasonable search and seizure. Thereby, defendants further acted outside of the constitutional limits of the contract by interrogating and compelling plaintiff to produce a title of nobility in violation of US Const. art I, § 10, cl. 1. When plaintiff refused to waive his constitutional rights, defendants’ deprived plaintiff of his contracted rights to due process and equal protection of the laws with prejudice by excessive force.

Further, defendant’s conspired to hide their misconduct by issuing false statements based off a prejudicial legal conclusion not allowed under the due process laws of the contract, and further, had help by the UOPD’s Chief of Police—Carmichael, and Sgt. John Doe of the departments Professional Standards Unit, and the University’s President—Schill, by failing to enforce the UOPD’s procedures for handling plaintiff’s complaint sent to the UOPD in a further attempt to help cover up the misconduct of the UOPD officers.

III. MEMORANDUM IN SUPPORT

A. DEFINITIONS

[A] contract is: (1) an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law <a binding contract>; (2) the writing that sets forth such an agreement <a contract is valid if valid under the law of the residence of the party wishing to enforce the contract>; (3) an enforceable agreement between two or more parties to do or not to do a thing or set of things; a compact <when they finally agreed, they had a contract>. *Black’s Law Dictionary* 10th Ed. @ 389-390.

[A] constitution is: (1) the entire plan or philosophy on which something is constructed; (2) the fundamental and organic law of a county or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign power,

and guarantees of individual civil rights and civil liberties; a set of basic law and principles that a country, state, or organization is governed by; (3) the written instrument embodying this fundamental law, together with any formal amendments. *Black's Law Dictionary* 10th Ed. @ 376.

“This—United States—Constitution—[t]he contract—and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every States shall be bound thereby, any Thing in the Constitution or Law of any State to the Contrary notwithstanding.” US Const art VI, cl. 2. (emphasis mine.)

B. ARGUMENT

“[N]o state shall * * * pass any Law impairing the obligation of contracts.” US Const. art. I, § 10, cl. 1. No provision of the Constitution is designed to be without effect. Anything that is in conflict is null and void of law. Clearly, for a secondary law to come in conflict with the Supreme-Law is illogical, for certainly, the Supreme Law would prevail over all other laws and certainly our forefathers had intended that the Supreme-law would be the basis of all law, and for any law to come in conflict would be null and void of law, it would bare no power enforce, it would bare no obligation to obey, it would purport to settle as if it had never existed, for unconstitutionality would date from the enactment of such a law, not from the date so branded in an open court of law, no courts are bound to uphold it, and no citizens are bound to obey it. It operates as a near nullity or fiction of law. If any statement, within any law, which is passed, is unconstitutional, the whole law is unconstitutional. See *Marbury v. Madison*, 5 U.S. 137 (1803).

“No public policy of a state can be allowed to override the positive guarantees of the Constitution of the United States.” 16 Am. Jur 2d, Const. Law, § 70. Furthermore, “Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.” *Miranda vs. Arizona*, 384 U.S. 436, 491, (1966). And the Ninth Amendment of the US Const. states, “Enumeration in this constitution of certain rights shall not be construed to deny or disparage others retained by the people.” This means congress has no authority to add on to the constitution in such a way that would take away rights previously

guaranteed. “The state cannot diminish Rights of the people.” *Hurtado vs. California*, 110 U. S. 516 (1883).

The US Const. Tenth Amendment states, “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.” The constitution is a contract designed to limit government. *Police power* is a states Tenth Amendment right, *subject to due-process and constitutional limitations*, to establish and enforce laws protecting the public’s health, safety, and general welfare. Black’s Law Dictionary 10th Ed. @ 1345. A police officer has no power to take away rights guaranteed by the US Constitution.

The Fifth Amendment of the US Const. states, “No person shall * * * be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken...” Meaning, a person has a right to remain silent and not be compelled to produce documentation that will be used against him in a court of law. See *Brown v. Texas*, 443 US 47, 61 LED 2d, 357,99 S. Ct. 2637 (1979), and *Moya v. US*, 761 F2d, 322 (7th Cir. 1958).

The assistance of council is guaranteed by the Sixth Amendment of the US Constitution. “if the individual indicates, prior to or during questioning, that he wishes to remain silent, the interrogation must cease; if he states that he wants an attorney, the questioning must cease until an attorney is present. See *Miranda v. Arizona*, 384 U.S. 436 (1966).

The Fourth Amendment of the US Const. forbids unreasonable search and seizure without probable cause supported by Oath or affirmation and issued by Warrant. There are no exceptions to this contracted right. See *Marbury v. Madison*, 5 U.S. 137 (1803) and *Miranda v. Arizona*, 384 U.S. 436 (1966). As stated above, the Ninth and Tenth Amendments forbids Congress from adding or subtracting from the individual’s contracted civil rights and liberties. You cannot use one clause of the federal Constitution to override another clause of the federal Constitution. See *Williams v. Rhodes*, 393 U.S. 23 (1968). And, US Const. art. I., § 10, cl. 1 forbids congress from making exceptions to plaintiff’s contracted civil rights by stating, “No state shall pass any * * * Law impairing the Obligation of Contracts...”

Moreover, US Const art. I, § 1 states, “*All legislative Powers herein granted* shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” If the power isn’t granted, the civil government doesn’t have it. This is in

reference to Congress expanding upon a federal statute without the granted power to do so by the people. Like making exceptions to the warrant requirement of the Fourth Amendment. The US Constitution doesn't allow it.

The Thirteenth Amendment of the US Const. states, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." In sum, a person cannot be compelled to waive any of his contracted civil liberties and rights.

The Fourteenth Amendment of the US Const. states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is important to understand how this constitution is supposed to be enforced. 16 Am Jur 2d, Const. Law, § 97: That a constitution should receive a liberal interpretation in favor of the citizen is especially true with respect to those provisions which were designed to safeguard the liberty and security of the citizen in regard to both person and property. See *Byars v. United States*, 273 U.S. 28 (1927). In other words, it's supposed to be liberally enforced in favor of the citizen for the protections of their rights and property. Any constitutional provision intended to confer a benefit should be liberally construed in favor of the clearly intended and expressly designated beneficiary.

The bottom line to the US Constitution is that it clearly represents a contract. [T]he constitution is a contract in writing enforceable in a court of law pursuant to the statute of frauds. Plaintiff is asking for specific performance of his contractual rights of the contract by the Court in favor of him. As plaintiff is the beneficiary of the contract.

16 Am Jur 2d, Const. Law, § 114 – 117 in sum, states that various facts and circumstances extrinsic to the constitution are often resorted to by the courts to aid them in determining its meaning. As previously noted, however, such extrinsic aids may not be resorted to where the vision in the question is clear, and unambiguous in such a case the court must apply the terms of the constitution as written. They are not at liberty to search for meanings beyond the instrument.

16 Am Jur 2d, § 165: Since the constitution is intended for the observance of the judiciary as well as other parts of government, the courts are not at liberty to overlook or disregard its commands or countenance evasions thereof. It is their duty in authorized proceedings to give full effect to the existing constitution, and to obey all constitutional provisions irrespective to their opinion of the wisdom or the desirability of such provisions, and irrespective of the consequences. Thus, it is said that the courts should be in alert to enforce the provisions of the United States Constitution, and guard against their infringement by legislative fiat or otherwise. In accordance with these basic principles the rule is fixed that the duty in the proper case to declare a law unconstitutional cannot be declined, and must be performed in accordance with the delivery of judgment of the tribunal before which the validity of the enactment is directly drawn into question. If the constitution prescribes one rule, and the statute another, in a different rule, it is the duty of the court to declare that the constitution and not the statute governs in cases before them for judgment.

16 Am Jur 2d, § 255: In all instances when the court exercises its power to invalidate legislation on constitutional grounds, the conflict of the statute with the constitution must be irreconcilable. The court is without authority to declare a statute unconstitutional unless it is in positive or in direct conflict with the statutes or with the constitution.

16 Am Jur 2d, § 256: The general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law is really no law; but is wholly void and ineffective for any purpose. Since unconstitutionality dates from the time of the enactment, not merely from the date of the decision so branding it. An unconstitutional law in legal contemplation is as inoperative as if it had never been passed. Such a statute leaves a question that it purports to settle just as it would be had the statute not ever been enacted.

16 Am Jur 2d, § 258: On the other hand it is clear that congress cannot by authorization or ratification give the slightest effect to a state constitution or law which is in conflict with the constitution of the United States. See *Marbury v. Madison*, 5 U.S. 137 (1803).

IV. CONCLUSION

Therefore, plaintiff respectfully moves the Court to take Notice of defendant's failure to rebut plaintiff's memorandum in support of the facts of a citizen's right to travel laid out in the proposed third amended complaint of the plaintiff's motion for leave and other pleadings of record, and for the Court to accept plaintiff's memorandum and law within the pleadings, as undisputed evidence of facts within the record of a citizen's right to travel, and is pursuant to Fed. R. of Civ. P. 301. Also, plaintiff respectfully moves the Court for performance in favor of his claims for the breach of his contracted rights of the US Constitution by the defendants.'

Autograph: s/: James-Brent: Alvarez.
[t]he Plaintiff: James-Brent: Alvarez.
Postmaster: RA535207145US
Date: 18th-May-2020.

CERTIFICATE OF SERVICE

I hereby certify that on the date scribed below a copy of the foregoing Plaintiff's Objection and Motion for Performance of Contract was served by email, as agreed upon during the Covid-19 pandemic, and, was served on:

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